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Summary record of the 1222nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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be defined in more general terms for the present topic than for the related topic. In any case, the Commission should, as was its practice, reconsider the definitions proposed by the Special Rapporteur after it had studied the different cases of succession.

62. Mr. CALLE y CALLE said he associated himself with the tributes paid to the Special Rapporteur for his remarkable analysis of a topic on which little guidance was provided by legal writings or precedents.

63. With regard to the definition of "succession of States", he favoured the reference to the replacement of sovereignty. Such questions as succession ot public property were governed by rules which had their foundation in the sovereignty of the successor State.

64. The Special Rapporteur had intimated that the list of terms in article 3 was not yet complete and that additional terms would be added later. He himself would suggest including a definition of the date of succession, which was important in such matters as the effects of succession on public debts. He would also suggest including a definition of the term "newly independent States".

65. As to the classification of cases of succession, he found the Special Rapporteur's proposals acceptable.

66. Lastly, he endorsed the Special Rapporteur's pragmatic approach; the draft stated practical rules. The best way to deal with them was to examine the draft article by article.

The meeting rose at 1 p.m.

1222nd MEETING

Thursday, 7 June 1973, at 10.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of matters other than treaties

(A/CN.4/226; A/CN.4/247 and Add.1; A/CN.4/259; A/CN.4/267)

[Item 3 of the agenda]

(continued)

ARTICLE 1 (Scope of the present articles),

ARTICLE 2 (Cases of succession of States covered by the present articles) and

ARTICLE 3 (Use of terms) *(continued)*

1. The CHAIRMAN invited the Commission to continue its general discussion on the Special Rapporteur's sixth report (A/CN.4/267) and consideration of articles 1, 2 and 3.

2. Mr. BARTOŠ said that the topic under consideration, although new from the theoretical point of view, was not new in the practice of international law. The Commission had divided succession of States into two topics, according to whether it arose in regard to treaties or to matters other than treaties. For the first topic, succession of States in respect of treaties, which had been entrusted to Sir Humphrey Waldock, it was possible to formulate traditional rules of international law based on the presumption of free expression of the will of the parties concerned. It should be noted incidentally, however, that the parties were not always able to express their will freely; a case in point was the creation of the State of Yugoslavia. In the matter of succession of States, some agreements reflected not so much the will of one or other of the parties as the sole will of a State with imperialist designs, which was imposed on another State.

3. The question of succession of States in respect of matters other than treaties involved the whole of international law. There were two basic theories. One stressed the acquired rights of the former sovereign, while the other, which was revolutionary in outlook, emphasized liberation, so that the birth of a new independent State meant the transfer of sovereignty with all its attributes. According to the first theory, on the other hand, rights which had been more or less lawfully acquired remained attached to the predecessor State, so that the successor State was only partly liberated. But the United Nations had proclaimed the inalienable right of liberated nations to sovereignty over their natural resources and wealth; and that principle applied not only to natural wealth, but also to artificial wealth such as roads, railways, canals, etc. The two theories had opposite consequences with regard to compensation of the predecessor State.

4. It was therefore important to choose from the two theories the one which corresponded to the policy generally followed by the international community. The present trend seemed to be to grant newly independent States a natural right to their soil and their property and it was that trend which the Special Rapporteur had followed, while being careful to present it with moderation, so as not to arouse hostility.

5. The first three of his proposed articles stated basic provisions and ideas of international law which were recognized by most nations. It was essential to define the notion of public property. The public property of a State was not simply certain specific property; it included the whole of the public domain. That point should be introduced into the preliminary provisions.

6. As to the transfer rule, that raised the question of the date of transfer. Was it the date of acquisition of the territory by the new sovereign, or could it be considered that occupation or colonization entailed a provisional limitation or suspension of sovereignty? Even if it were considered that the change of sovereignty took place *de jure* at a given moment, it was nevertheless possible to apply the rule of retroactivity, which he would like to see included in the draft. In that way, States would not lose their right to sovereignty over their soil, and that sovereignty would reappear. Those ideas should be expressed in the draft articles or at least in the commentary.

7. The CHAIRMAN invited the Special Rapporteur to reply to the comments made during the discussion.

8. Mr. BEDJAOUI (Special Rapporteur) said that all the ideas expressed during the discussion would be helpful to him in the continuation of his work.

9. With regard to article 1, on the scope of the articles, he would remind the Commission that it had clearly defined the topic in 1967. It had distinguished between succession in respect of treaties, treaties being considered as a source of rights and obligations, and succession in respect of rights and duties resulting from sources other than treaties.[1] It had thus wished to contrast succession of the conventional type with succession of the non-conventional type. When the first topic had been examined, however, treaties had not been considered as constituting a source of rights and duties, but as the subject-matter of succession. The Commission had not considered the content of the treaties, but merely whether the successor State should receive them into its legal order. For the sake of symmetry, it had therefore been necessary to abandon the classification according to sources in dealing with the second topic. The matters to be dealt with as part of the second topic, particularly public property and public debts, should not be considered with reference to sources other than treaties, such as custom, but as the subject-matter of succession. The distinction according to sources had not proved very fruitful; moreover, custom would have provided little guidance and it would have been difficult to draw the line between treaty sources and other sources, as Mr. Bartoš had said in 1968.[2] And it was Mr. Ago who had first pointed out that the distinction made by the Commission was not satisfactory and that it was necessary to remove the ambiguity it caused.[3]

10. The matters other than treaties which were to be taken into consideration had been selected in 1963 by the Sub-Committee presided over by Mr. Lachs. They had then been approved by the Commission in 1968, when it had examined his first report (A/CN.4/204).[4] Those matters constituted subjects of succession, whether there were any treaty rules or not. In that connexion, he wished to assure Mr. Ushakov that the draft had never been intended to exclude the faculty of States to proceed to succession by agreement.

11. He thought that article 1 should be referred to the Drafting Committee, as most members had suggested.

12. Article 2, which has its counterpart in the related draft, had not raised any difficulties. It could also be referred to the Drafting Committee.

13. Article 3, on the other hand, had given rise to discussion, which was not surprising since it contained definitions. Some members, like Mr. Yasseen, thought it preferable to defer consideration of the definitions; others, in particular Mr. Ushakov, thought that the definitions were of prime importance and could have decisive consequences for the whole of the draft; others, again, had asked him for explanations or suggested drafting changes. Among the latter, Mr. Kearney had proposed that the words "practical effects" should be replaced by "legal effects".[5] That was quite right, because it was mainly with the concrete legal effects that the Commission was concerned. He also welcomed Mr. Yasseen's suggestion that consideration of the definitions should be left till later. That had, indeed, been the practice followed by the Commission with all its draft articles, including Sir Humphrey Waldock's draft.

14. Although it would be preferable not to examine article 3 until later, he wished to reply to the comments made on it. In view of the many different meanings which could be ascribed to the word "sovereignty", as Mr. Quentin-Baxter had observed, it might perhaps be better to avoid using that term. Nevertheless, Mr. Bilge had quite rightly pointed out that the difficulties raised by the term were exaggerated, and that in any case they were not insurmountable, so that the Commission could reach agreement on its exact meaning. He had used the term "sovereignty" deliberately, so as not to speak only of the State, but also of its jurisdiction in the broad sense.

15. Mr. Ushakov had expressed the wish that the Commission should adopt a general definition of the term "State succession", applicable to both topics. But in its 1968 report to the General Assembly, the Commission had maintained that there was no need to attempt to draw up a general definition of State succession.[6] Moreover, in the discussion in 1968, Mr. Ushakov himself had said that "there was no need for the Commission to attempt a general definition of State succession, which would hardly be of practical interest in connexion with a future convention".[7]

16. In any case, he shared Mr. Ushakov's present concern, being convinced like him that it was necessary to avoid having several different definitions for one and the same topic. Nevertheless, the mere fact that State succession had been divided into three topics showed that each had its own characteristics, and that might militate in favour of different definitions.

17. He himself had been the first to suggest a general definition, since question 2 of the questionnaire he had submitted in the Commission in 1968 had been entitled "General definition of State succession".[8] He had considered three aspects of the question: terminology, form and substance. It was because the Commission had given up the idea of a general definition that he had proposed a second definition. In 1968 it had become clear that each Special Rapporteur was justified in formulating a separate definition for his own draft. The attachment of Sir Humphrey Waldock's topic to the general law of treaties showed the difference between the two topics. Another difference lay in the fact that Sir Humphrey Waldock's topic involved more aspects of public inter-

[1] See *Yearbook of the International Law Commission, 1967*, vol. II, p. 368, document A/6709/Rev.1, paras. 38-41.

[2] *Ibid., 1968*, vol. I, p. 103, 960th meeting, para. 50.

[3] *Ibid.*, p. 102, paras. 37 and 38.

[4] *Ibid., 1968*, vol. II, p. 221, document A/7209/Rev.1, para. 79.

[5] See 1220th meeting, para. 32.

[6] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 217, document A/7209/Rev.1, para. 50.

[7] *Ibid., 1968*, vol. I, p. 122, 963rd meeting, para. 53.

[8] *Ibid.*, p. 111, 962nd meeting, para. 1.

national law than his own. Moreover, the problem of public property introduced notions that were very different from that of a treaty, such as those of an administrative contract, a concession, and internal legislation. It should also be noted that the two definitions proposed did not conflict, but complemented one another. They reflected two aspects of the same question, and the definition he had himself proposed did not involve any reconsideration of the Commission's work on succession in respect of treaties. As Sir Humphrey Waldock himself had pointed out: "It should not be assumed that a word given a certain connotation in a convention must necessarily have precisely the same connotation in other contexts."[9]

18. There was a difference between the two topics which might justify two complementary definitions. Succession in respect of treaties involved the right of the State to be bound by a treaty only as an effect of its will. It was that right which had to be reconciled with the phenomenon of State succession. In that context, the rights and duties deriving from the succession were of little importance—so little, indeed, that Sir Humphrey Waldock had proposed, in his first definition, that succession of States should be considered as a change "in the possession of the competence to conclude treaties".[10] In his own topic on the other hand, the question of competence did not arise, and it was the rights and duties deriving from the change of competence that had to be taken into consideration. The previous year, Mr. Ushakov had pointed out that State succession comprised two elements: the replacement of one State by another and the legal consequences of that replacement; and he had suggested introducing the second element into the definition of the term "succession".[11] That was precisely what he (Mr. Bedjaoui) had done.

19. Turning to general questions, he said that he had never intended to start from succession to territory and proceed to succession to public property, as Mr. Reuter supposed. On the contrary, he had tried to seriate the various questions raised by Mr. Reuter, in particular the rights attaching to territory, and in his first report[12] he had devoted a separate chapter to succession to territory. In that chapter he had dealt with succession to boundaries, servitudes, rights of way and enclaves. The problems, mentioned by Mr. Kearney, which might be raised by a weather satellite in orbit, could also be considered, as could fishing rights and the rights of the State over the continental shelf.

20. Many members of the Commission had raised the question whether the proposed articles were in the nature of residuary rules. Mr. Ushakov had expressed the fear that the draft might oblige States to give up their faculty of concluding succession agreements.[13] But the reason why the draft did not expressly mention that faculty was that it was self-evident. The purpose of the draft could be to provide States with rules by which they could be guided within the framework of an agreement or which they could decide to observe in the absence of an agreement. Contrary to what Mr. Ushakov thought, many provisions in the draft referred to the faculty of concluding an agreement. That applied to the expressions "by treaty or otherwise" in article 7; "devolution agreements" in article 10, paragraph 3; "treaty provisions" in article 21, paragraph 1; "stipulated by treaty" in article 23, paragraph 1; and "by treaty" in article 25, paragraph 2.

21. As to the fate of the draft itself, the text adopted might take the form of a convention. The large number of provisions, however, might rather suggest a code of conduct for States, though the articles would be systematically regrouped later.

22. Mr. Ustor had raised two questions.[14] First, he had asked how far States could depart from the rules of the draft by agreement and had suggested that a provision be drafted on that point. He (Mr. Bedjaoui) found that proposal especially interesting because he had himself suggested, in his fourth report (A/CN.4/247 and Add.1), a provision stipulating, that any conventional limitation of the general principle of transfer of public property must be strictly interpreted (article 4). He had subsequently abandoned that provision, which seemed to him to be difficult to draft as well as to apply.

23. Secondly, Mr. Ustor had asked whether it should not be specified that the rules of the draft were without prejudice to the right of the successor State freely to regulate rights of property in its internal law. He shared that opinion, but had noted some doubts on the part of members of the Commission. In his second report,[15] devoted to acquired rights, he had pointed out that the successor State must also be regarded first and foremost as a State. Again, in a previous version of article 10, on concessions (A/CN.4/247 and Add.1), he had referred to "the natural authority of the new sovereign to modify the pre-existing concessionary régime". He had subsequently had to abandon that clause, but was willing to reintroduce it. He felt some doubt, however, since in the case in point the successor State was acting not as a successor, but as a State, which took the problem outside the present topic.

24. Another general comment had related to legal technique and the role of the titles of the articles, which made them easier to understand. Although it was true that each article should itself contain all the elements needed to make it understandable, it must not be forgotten that what the Commission was examining was a first draft. As to the titles, he agreed with the Chairman that legally they were an integral part of the instrument. That had also been the opinion of the Vienna Convention on the Law of Treaties. Moreover, it would be found that it was made sufficiently clear in each article what kind of succession was referred to. But of course improvements could still be made by the Drafting Committee.

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[9] *Ibid.*, p. 119, 963rd meeting, para. 9.

[10] *Ibid., 1968*, vol. II, p. 90.

[11] *Ibid., 1972*, vol. I, p. 33, 1156th meeting, para. 22.

[12] *Ibid., 1968*, vol. II, p. 94, document A/CN.4/204.

[13] See 1220th meeting, para. 37.

[14] See previous meeting, paras. 42-45.

[15] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 69, document A/CN.4/216/Rev.1.

25. With regard to types of succession, he had at first intended to exclude all cases of irregular acquisition of territory. He would have liked the Commission to examine that question, but had finally had to abandon the idea, and it was perhaps in order to provoke such examination that he had included a section on those cases. Mr. Ushakov had reacted by emphasizing the unlawful character of cases of succession in which no State was created, but the predecessor disappeared. But some cases of disappearance of a State, or of partition, could be lawful within the framework of plebiscites or the right of self-determination. It seemed preferable only to take up questions of typology as they arose, in other words, to begin with the examination of article 12. The typology adopted for Sir Humphrey Waldock's topic had not been very rigorous. Certain cases of succession, moreover, could not be classified. For instance, the phenomenon of colonization, which should obviously not arise again in the future, was impossible to classify. That also applied to the cases of the French establishments in India, which had been joined to that country, and the disappearance of the Austro-Hungarian Empire. Consequently, the typology adopted for the other draft should not be considered as immutable, though he had followed it as far as possible. He would be prepared to abandon the provisions relating to the disappearance of a State by partition.

26. As to terminology, questions were bound to arise in view of the variety of systems of law and the diversity of languages used. For instance, a distinction was made between two kinds of public property. State property passed from the patrimony of the predecessor State into that of the successor State. Other public property belonging to territorial authorities or public establishments, did not change ownership merely by reason of a succession; such property, however, was no longer governed by the legal order of the predecessor State, but by that of the successor State. Those differences were difficult to express precisely and raised delicate translation problems. In addition, the terminology used in treaties was of infinite diversity.

27. At the end of the draft he intended to deal with several additional questions, such as relations between the successor State and third States. For the time being, so far as public property was concerned, it was mainly the predecessor State and the successor State which were involved, but it might be necessary to mention relations with third States in another context. It had been noticed, however, that he had considered that question whenever he had dealt with public property situated in the territory of a third State. Another provision might stipulate that the substitution, in principle, of the successor State in the patrimonial rights of the predecessor State implied that those rights were unchallenged. Similarly, that substitution must not impair the rights of third States. Where the draft spoke of an equitable distribution of public property, it referred only to relations between the predecessor State and the successor State or between several successor States, not to relations with third States, which were clearly not concerned in any way.

28. Mr. Bartoš had mentioned the case in which the status of railways was modified as a result of succession. That case seemed to touch on another sphere. For example, in article 10, on concessions, he had referred to the rights of the conceding Power, but not to the content of the concession or the power to modify it. The latter aspect of the matter raised the question of acquired rights. For the time being the Commission must confine itself to affirming that the rights of the conceding State, as they existed in favour of the predecessor State, passed to the successor State.

29. With regard to archives, Mr. Ago had said that it was necessary to see whether there was a recognized right in that matter. Although he thought he had gone into that question in sufficient detail in his sixth report (A/CN.4/267), he was willing to pursue his research and draft a note on it.

30. In article 12 he had stated the rule that "The privilege of issue shall belong to the successor State throughout the transferred territory". That privilege was not conferred on States by international law; it derived from their sovereignty. The situation was not always as clear as that, however. In certain cases of decolonization, for instance, the colonial Power had retained the privilege of issue in the territory which had become independent. He would nevertheless be willing to abandon that provision, provided the matter was dealt with in the commentary.

31. He was not sure whether article 4 should be referred to the Drafting Committee, as Mr. Ushakov had suggested. It did not raise any difficulties; it simply specified that the draft referred to succession of States, not of governments and to succession to public property, not to other matters. It should be read in the light of the decisions taken by the Commission in 1968, when it had defined the scope of the topic.[16]

Mr. Yasseen took the Chair.

32. Mr. AGO said he wished to point out, for the benefit of the Special Rapporteur, that when he had referred, in a previous intervention, to the successive approaches adopted for the study of the topic of succession of States, it had not been in order to call in question the decision taken by the Commission, but to clarify it. Two reasons had led the Commission to go back on its initial decision to divide the topic according to the source of the succession. The first was that nearly all cases of succession were settled by treaty, so that very few cases would have been left for the Special Rapporteur for succession not having its source in a treaty; and the second was that the Special Rapporteur for succession in respect of treaties had soon found that from the viewpoint adopted in his report, the treaty was the subject-matter and not the source of the succession. The criterion adopted had thus been inappropriate, even though it had had the merit of being clear. The second criterion chosen—the subject-matter of the succession—could have been clear if it had been taken in the sense of succession of one State to another in international rights and obligations resulting on the one hand from treaties, and on the other hand from custom or other

[16] *Ibid., 1968*, vol. II, p. 216, A/7209/Rev.1, paras. 46 *et seq.*

sources. But, there again, the balance tilted strongly in favour of treaties.

33. In omitting—no doubt intentionally—to qualify as "international" the rights and obligations referred to in his definition of succession of States, in article 3, subparagraph (*a*), the Special Rapporteur had endeavoured to cover those cases in which one State succeeded another in rights and obligations which came under internal law, but in virtue of a rule of international law concerning succession. Thus on the one hand there was succession to rights and obligations of international law, and on the other hand there was succession to rights and obligations of internal law. The question which then arose was whether any particular case was a case of succession provided for by a rule of international law or simply the external manifestation of the fact that a State had been born, that it was sovereign, that its legal order had replaced the previous legal order, and that it was operating within that legal order independently of any rule of international law concerning succession of States.

34. There then arose an extremely important question of method. The Special Rapporteur had chosen to proceed according to the different categories of subject-matter of succession, beginning with public property, and had stated a rule relating to each of the various categories of such property. The drawback to that method was that there were very few rules of international law governing succession, so that the Special Rapporteur had been led sometimes to state an existing rule, and sometimes a rule which did not exist, but which he proposed that the Commission should adopt, and, even more frequently, to describe in his formulation what often happened, though not in fulfilment of any international obligation concerning succession of States.

35. That raised the question of what the Commission wished to do. If it intended to produce a code half way between codification and theory, the method was sound. But if its intention was to prepare a general convention on succession, there would be difficulties. The Commission's task would no longer be to make a general examination of what most often happened to the various kinds of public property in the event of a succession, but merely to ascertain in what cases rules of international law governing the subject need or need not be formulated. It was thus clear that the choice of method depended on the Commission's final aim and that it was important to reach agreement on that aim as quickly as possible.

36. Mr. USHAKOV thanked the Special Rapporteur for his explanations, which he had followed with great interest.

37. He repeated the proposal he had made at the previous meeting that article 4 be referred to the Drafting Committee without discussion.

Mr. Castañeda resumed the Chair.

38. Mr. BEDJAOUI (Special Rapporteur) said that Mr. Ago's comments should be carefully considered by the Commission. He himself did not yet know what would become of the draft articles. The approach he had adopted was not to overlook any of the problems concerning public property, but it had led him into several difficulties, which he was not sure he had managed to overcome completely. Mr. Ago's comments showed that the method itself was open to criticism. It was true that it had led him to propose, in some cases, unchallenged rules of international law, and, in many others, descriptive rules showing what happened in most cases of succession of States. It was now for the Commission to decide whether the provisions he had proposed in his sixth report were rules of international law suitable for inclusion in a draft, or whether they were rules which, however correct, were not entirely rules of international law.

39. The CHAIRMAN speaking as a member of the Commission, said it was his impression that in dealing with the question of public property the Commission was entering a field in which there were no rules of international law, properly speaking, which governed the majority of cases, but rather a prevalence of municipal rules. However, when it came to deal with other subject-matter of the law of succession, such as the status of aliens, acquired rights and the like, it was probable that rules of international law would play a larger part.

40. For example, the first two paragraphs of article 12, on currency and the privilege of issue, did not involve international law at all, but in paragraph 3 there appeared to be the germ of a rule of international law, although it was difficult to distinguish between its external and its internal aspects.

41. He agreed with Mr. Ago, therefore, that the Commission should agree on its method of approach before deciding whether the instrument it was attempting to draw up should take the form of a code or a convention.

42. Mr. BEDJAOUI (Special Rapporteur) said it seemed that the majority of the Commission were in favour of referring articles 1, 2 and 4 to the Drafting Committee. Article 3 might perhaps be put aside temporarily, though the Drafting Committee might examine it, if it saw fit. In any event, it was only a first draft, which would certainly be added to later.

43. The CHAIRMAN asked if there were any objections to the procedure proposed by the Special Rapporteur.

44. Mr. AGO said he could agree to articles 1 and 2 being referred to the Drafting Committee, but not articles 3 and 4, on which several members had not yet expressed their opinion.

45. Mr. YASSEEN said he was in favour of leaving article 3 aside, as was the Commission's practice with definitions articles. Article 4 merely defined the sphere of application of the draft, so it would be better not to refer it to the Drafting Committee until the Commission had considered article 5, with which it was closely connected. The two articles could then be referred to the Drafting Committee together.

46. The CHAIRMAN speaking as a member of the Commission, said he entirely agreed with Mr. Yasseen that articles 4 and 5 should be considered together. For the time being, article 3 should be left aside.

47. Mr. BEDJAOUI (Special Rapporteur) said that article 4 might indeed be related to article 5, although he had not really intended to make it a definitions article. Article 4 was an article without pretentions. It simply stated that the following part of the draft related to

public property, without specifying what that property was. In drafting the article, he had followed the instructions of the Commission, which, at its twentieth session, had asked him to deal with succession in respect of economic and financial matters.[17] One of the sub-divisions of his study was entitled "Public property": the article which covered that point was not necessarily related to article 5, which defined public property.

48. Mr. KEARNEY said he feared that it would cause some confusion in the Sixth Committee of the General Assembly if the Commission submitted to it a series of articles which did not include an article, such as article 3, on the use of terms. The Commission should at least indicate to the Sixth Committee, in some way, that it was working with a different definition of "succession of States" from the one it had adopted at its previous session.

49. The CHAIRMAN speaking as a member of the Commission, said he fully agreed with Mr. Kearney that it was very important that the Commission should avoid creating any confusion in the minds of the Sixth Committee. He suggested that it should state clearly in its report that, in accordance with its usual practice, the definitions article would be dealt with at a later stage.

50. Mr. USTOR said that at its 1968 session, when dealing with the topic of relations between States and inter-governmental organizations, the Commission had included a definitions article, but had stated that it was provisional and subject to later decision of the Commission. He therefore supported the suggestions of Mr. Kearney and the Chairman.

51. Mr. MARTÍNEZ MORENO said that he supported the suggestions put forward by Mr. Kearney, the Chairman and Mr. Ustor. He proposed that the Commission set up a small working group, consisting of the Special Rapporteur, Mr. Ago, Mr. Kearney, Mr. Ushakov, Mr. Ustor and Mr. Yasseen, to draft a satisfactory text of article 3 for submission to the General Assembly.

52. The CHAIRMAN proposed that articles 1, 2 and 4 be referred to the Drafting Committee, but not article 3.

53. Mr. AGO said that in his opinion, article 4, which defined the subject-matter to be considered, was a key article that must be examined thoroughly. Hence he could not agree to its being referred to the Drafting Committee.

54. Mr. REUTER said he agreed with Mr. Yasseen that article 4 was closely connected with article 5 and that it would be premature to refer it to the Drafting Committee.

55. The CHAIRMAN suggested that articles 1 and 2 be referred to the Drafting Committee,[18] that article 4 be discussed together with article 5, and that article 3 be dealt with at a later stage.[19]

It was so agreed.

[17] *Ibid.*, p. 221, para. 79.

[18] For resumption of the discussion see 1230th meeting, paras. 8 and 35.

[19] See 1230th meeting, para. 8.

Other business

[Item 10 of the agenda]

56. The CHAIRMAN said that, before adjourning the meeting, he wished to announce two decisions which had been taken by the officers of the Commission and former chairmen.

57. First, it had been decided that it would be impractical to attempt to celebrate the Commission's twenty-fifth anniversary at the present session, since most of the Judges of the International Court who were former members of the Commission had intimated that they would be unable to attend such a ceremony. It had therefore been agreed that the Commission's anniversary should be celebrated at its next session in 1974 and that Mr. Sette Câmara should be asked to maintain contact with the General Assembly with a view to making the necessary preparations.

58. Secondly, it had been decided that, owing to lack of funds, it would be impossible to send a delegation of members to the twenty-eighth session of the Gencral Assembly and that the Commission should be represented there by its Chairman alone, in accordance with its usual practice.

The meeting rose at 1.5 p.m.

1223rd MEETING

Friday, 8 June 1973, at 10.10 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN
Later: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Succession of States in respect of matters other than treaties

(A/CN.4/226; A/CN.4/247 and Add.1; A/CN.4/259; A/CN.4/267)

[Item 3 of the agenda]

(resumed from the previous meeting)

ARTICLES 4 AND 5

Article 4
Sphere of application of the present articles

The present articles relate to the effects of succession of States in respect of public property.

Article 5
Definition and determination of public property

For the purposes of the present articles, "public property" means all property, rights and interests which, on the date of the change of sovereignty and in accordance with the law of the predecessor State,